

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54655; File No. SR-NYSEArca-2006-48)

October 26, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change to Amend NYSE Arca Equities, Inc.'s Clearly Erroneous Executions Rule to Include an Appeal Fee for the NYSE Arca Marketplace (f/k/a the Archipelago Exchange)

On August 11, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to assess a fee associated with the appeals process of NYSE Arca Equities, Inc. ("NYSE Arca Equities") Rule 7.10. The proposed rule change was published for comment in the Federal Register on September 22, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

NYSE Arca proposes to amend NYSE Arca Equities Rule 7.10 governing clearly erroneous executions ("CEEs") on the NYSE Arca Marketplace (f/k/a the Archipelago Exchange), the equities trading facility of NYSE Arca Equities. Specifically, under the proposed rule change, if an Equity Trading Permit ("ETP") Holder appeals a CEE decision made by an NYSE Arca Equities officer to the CEE Panel and the CEE Panel subsequently upholds the decision, the ETP Holder would be assessed a \$500.00 fee. The Exchange believes that assessing a \$500.00 fee against any ETP Holder who appeals a CEE decision that is subsequently upheld by the CEE Panel would discourage frivolous and abusive uses of the CEE appeal process. The Exchange noted that some ETP Holders have taken advantage of the appeals

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54466 (September 18, 2006), 71 FR 55537.

process by appealing all decisions in which they are involved, including decisions that involve a de minimis value.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁵ which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,⁶ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, protect investors and the public interest. The Commission believes that the proposed fee is reasonable as a method to discourage frivolous uses by ETP Holders of the Exchange's CEE appeal process. In addition, the Commission believes that the proposal would not unduly affect the rights of an ETP Holder to appeal to the CEE Panel the decisions of NYSE Arca Equities officers with respect to transactions that are alleged to involve a clearly erroneous execution.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NYSEArca-2006-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Nancy M. Morris
Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).